

United States
Circuit Court of Appeals

For the Ninth Circuit.

MARTIN ROZEMA, Assignee of the Judgment of
the HALE COMPANY, a Corporation,
Against the INTERNATIONAL TRADING
COMPANY, a Corporation,
Plaintiff in Error,

vs.

NATIONAL CITY BANK OF SEATTLE, a Na-
tional Banking Corporation, Garnishee,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED

AUG 10 1973

U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys of Record.

MESSRS. HADLEY, HAY & HADLEY, Attorneys for Plaintiff in Error, 375 Colman Building, Seattle, Washington.

MESSRS. BAUSMAN, OLDHAM, BULLITT & EGGERMAN, Attorneys for Plaintiff in Error, 1408 Hoge Building, Seattle, Washington.

ALMON RAY SMITH, Esq., Attorney for Defendant in Error, 822 Second Avenue, Seattle, Washington.

MESSRS. POE, FALKNOR & FALKNOR, Attorneys for Defendant in Error, 405 New York Block, Seattle, Washington. [1*]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 5003.

THE HALE COMPANY, a Corporation,
Plaintiff,

vs.

INTERNATIONAL TRADING COMPANY OF
AMERICA, Inc., a Corporation,
Defendant.

Judgment.

This cause came regularly on for trial on the 18th day of June, 1920, before the Hon. E. E. Cushman,

*Page-number appearing at foot of page of original certified Transcript of Record.

Judge of the above-entitled court, sitting without a jury, a jury in said cause having been waived by the parties hereto as shown by the stipulation of said parties on file herein, the plaintiff appearing by N. A. Eisner and Walter A. McClure, its attorneys, and the defendant appearing by John W. Heal, Jr., and J. N. Hamill, its attorneys, whereupon witnesses were duly called and sworn and duly testified in behalf of the respective parties, and documentary proof was offered and received and said cause argued and submitted to the Court, and findings of fact and conclusions of law having been heretofore duly entered accordingly,

NOW, THEREFORE, it is by the Court Ordered, Considered and Adjudged that the plaintiff, The Hale Company, a corporation, have and recover of and from the defendant International Trading Company of America, Inc., a corporation, the sum of Fifty-two Hundred Dollars with interest at the rate of six per cent per annum from date hereof and costs to be taxed.

Done in open court this 7th day of July, 1920.

EDWARD E. CUSHMAN,

Judge. [2]

[Endorsements]: Filed Jul. 7, 1920. [3]

Affidavit for Garnishment.

[Caption and Title.]

United States of America,
Western District of Washington,—ss.

Walter A. McClure, being first duly sworn on oath deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled cause and makes this affidavit on plaintiff's behalf for the purpose of obtaining the issuance of a writ of garnishment herein; that heretofore and on to wit the 7th day of June, 1920, in the above-entitled court in the above-entitled cause duly rendered and entered judgment in favor of The Hale Company, a corporation, plaintiff above named and against the International Trading Company of America, a corporation, the defendant above named in the sum of Fifty-two Hundred Dollars (\$5200.00) with interest at the rate of six per cent (6%) per annum from said June 7, 1920, and costs taxed in the sum of Forty-five and 02/100 (\$45.02). That no part thereof has been paid and that said judgment is wholly unsatisfied. That plaintiff and this affiant have reason to believe and do believe that the National City Bank of Seattle, a corporation, Geo. S. Bush & Co., a corporation, Frank Waterhouse & Company, a corporation, the Oregon & Washington Railway & Navigation Company, a corporation, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation, each are indebted to the defendant and each of them has in its possession and

under its control personal [4] property and effects belonging to the defendant.

WHEREFORE affiant in behalf of said plaintiff demands that said National City Bank of Seattle, a corporation, Geo. S. Bush & Co., a corporation, Frank Waterhouse & Company, a corporation, the Oregon & Washington Railway & Navigation Company, a corporation, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation, and each of them be summoned to appear and answer as garnishees herein.

WALTER A. McCLURE.

Subscribed and sworn to before me this 22d day of July, A. D. 1920.

[Notary Seal] NELSON W. PARKER,
Notary Public in and for the State of Washington,
Residing at Seattle.

[Endorsements]: Filed Jul. 22, 1920. [5]

[Caption and Title.]

Writ of Garnishment.

United States of America,
Western District of Washington,—ss.

The United States of America to National City Bank of Seattle, a corporation, Geo. S. Bush & Company, a corporation, Frank Waterhouse & Company, a corporation, Oregon & Washington Railway & Navigation Company, a corporation, and the Chicago, Milwaukee & St. Paul Railway Company, a corporation,

WHEREAS in the above-entitled court in the above-entitled cause wherein The Hale Company, a corporation, as plaintiff, and the International Trading Company of America, a corporation, as defendant, the plaintiff did on the 7th day of June, 1920, recover judgment against the defendant in the sum of Fifty-two Hundred Dollars (\$5200.00) besides interest from June 7, 1920, at 6% per annum and costs of suit taxed in the sum of Forty-five and 02/100 Dollars (\$45.02) which judgment is wholly unsatisfied and has applied for writ of garnishment against you.

NOW, THEREFORE, you and each of you are commanded to be and appear before the said court within twenty days after the service upon you of this writ, if served within the county aforesaid, and within thirty days after the service of this writ upon you, if served in any other county in the State, then and there to answer upon oath in what amount, if any you are indebted to the [6] said International Trading Company of America, a corporation, *an* and were when this writ was served upon you, and what effects, if any, of the said International Trading Company of America, a corporation, you had in your possession or under your control and had when this writ was served upon you.

WITNESS the Honorable EDWARD D. WHITE, Chief Justice of the Supreme Court of the United States, and the seal of said District Court hereto affixed this 22d day of July, A. D. 1920.

F. M. HARSHBERGER,

[Seal U. S. District Court]

Clerk.

Marshal's Return.

I hereby certify and return that I served this writ on F. D. Hoffeditz, Assistant Agent, U. P. Dock at Seattle, Washington on July 22, 1920 at 1:10 P. M. on S. R. Bryan, Assistant Local Freight Agent, Chicago, Milwaukee Ry. Co., at Seattle, Washington July 22, 1920 at 1:30 P. M. on H. I. Hoskins, Secretary and Treasurer of the George S. Bush and Company, at Seattle, Washington on July 22, 1920 at 1:45 P. M. on J. W. Maxwell, President of the National City Bank at Seattle, Washington, July 22, 1920 at 2:00 P. M. and on N. H. Begley, Vice-President of the Frank Waterhouse Company, at Seattle, Washington July 22, 1920 at 2:15 P. M. by handing to and leaving with each of the above-named parties a true copy of this writ.

JOHN M. BOYLE,
United States Marshal.

By E. R. Tobey,
Deputy U. S. Marshal.

Marshal's fees 10.12.

[Endorsements]: Filed Jul. 27, 1920. [7]

[Caption and Title.]

Answer of Garnishee Defendant.

NOW COMES THE NATIONAL CITY BANK, of Seattle, a national banking association, one of the garnishee defendants of the above-entitled action and for answer to the Writ of Garnishment hereto-

fore issued and served upon it in said action, denies that it was at the time of the service of said writ or at any time since has been or is now indebted to the above-named defendant in any amount whatsoever and denies that it had at the time of the service of said writ or at any time since has had or now has any effects of said defendant in its possession or under its control except and unless it should be determined that said defendant is entitled to or may become entitled to an interest in the fund or property hereinafter referred to.

Further answering said writ, this garnishee defendant alleges as follows:

I.

That this garnishee defendant is a national banking association organized and existing under and by virtue of the acts of Congress relating to national banks and engaged in the banking business in the City of Seattle, Washington.

II.

That heretofore and on May 17, 1920, this garnishee defendant issued to Kelley & Co. Ltd., of Hong Kong, China, its certain letter of credit wherein and whereby this garnishee defendant engaged and agreed to honor drafts not exceeding Four Hundred Three Thousand Two [8] Hundred Dollars (\$403,200.00) in payment of the cost of certain granulated sugar which said letter of credit was issued at the request of, for the account of, and guaranteed by Frank Waterhouse & Co. of Seattle, Washington, a copy of same with endorsements thereon including said guaranty being hereto

attached, marked Exhibit "A," and by this reference made a part hereof as fully as though copied at length herein.

III.

That thereafter and in pursuance of the issuance of said letter of credit, said Kelley & Co. Ltd. of Hong Kong, China, shipped and consigned to its own order at Seattle, Washington, a quantity of granulated sugar with instructions to the carrier to notify International Trading Company of America, a corporation of Seattle, Washington. That said sugar reached Seattle on July 16, 1920, thereafter, and on July 23, 1920, this garnishee defendant paid the draft of Kelley & Co. Ltd. drawn under said letter of credit in the sum of Two Hundred Forty-four Thousand Nine Hundred Seventy Dollars and Forty-six Cents (\$244,970.46) and paid duty on said sugar in the sum of Fifteen Thousand Four Hundred Forty-one Dollars and Thirty-one Cents (\$15,441.31).

IV.

That this garnishee defendant is informed and believes and therefore alleges upon such information and belief that said sugar was sold through the joint efforts and agencies of said Frank Waterhouse & Co. and said International Trading Company of America, and one C. F. Buelow, doing business under the trade name of C. F. Buelow Co., all of Seattle, Washington, to Montgomery, Ward & Company of Chicago, Illinois, and John Sexton & Company of Chicago, Illinois, in definite portions and said sugar was immediately upon its arrival in

Seattle shipped and consigned by said International Trading Company of America to its own order at Chicago, Illinois, with instructions to notify Montgomery, Ward & Company and John Sexton & Company, and that the order bills of lading then issued to said International Trading Company of America by the carrier, were immediately endorsed, transferred [9] and delivered to this garnishee defendant by said International Trading Company of America.

V.

That this garnishee defendant has received from said Montgomery, Ward & Company of Chicago, Illinois, the sum of Two Hundred Thirty Three Thousand Nine Hundred Seventy Dollars and Fifty-two Cents (\$233,970.52) in full payment for the quantity of sugar sold to it, but that said John Sexton & Company has failed and refused and does refuse to pay for the quantity of sugar sold to it, the contract price for which was and is the sum of Thirty Nine Thousand Ninety-Two Dollars and Twenty-five Cents (\$39,092.25).

VI.

That on July 3, 1920, this garnishee defendant loaned to said International Trading Company of America the sum of Five Hundred Dollars (\$500.00) evidenced by its promissory note for that amount due July 15, 1920, with interest from maturity at the rate of eight per cent (8%) per annum, secured by an assignment of its claim to and an order on said Frank Waterhouse & Co. for any funds due said Trading Company upon the final division of

the proceeds of said sugar, a copy of said note and said assignment and order being hereto attached, marked Exhibit "B," and by this reference made a part hereof as fully as though copied at length herein.

VII.

That after the application of the proceeds of the sale to said Montgomery, Ward & Company to the payment of the amount advanced and paid to said Kelley & Co. Ltd., for the quantity of sugar sold to said Montgomery, Ward & Company, together with duty charges, commissions and interest, there remained and still remains in the hands of this garnishee defendant an excess amount of Ten Thousand Six Hundred Seventy-three Dollars and Twenty-six Cents (\$10,673.26), and there is still due this garnishee defendant for funds advanced and paid to said Kelley & Co. Ltd., in payment for the quantity of sugar sold to John Sexton & Company, as aforesaid, together with duty charges, interest, commission [10] and disbursements, the sum of Thirty-seven Thousand One Hundred Twenty-four Dollars and Eighty-one Cents (\$37,124.81), together with interest thereon at the rate of eight per cent (8%) per annum from July 23, 1920, and also the sum of Five Hundred Dollars (\$500.00) loaned to International Trading Company of America, as aforesaid, together with interest thereon at the rate of eight per cent (8%) per annum from July 15, 1920, until paid, all of which is secured by the excess fund of Ten Thousand Six Hundred Seventy-three Dollars and Twenty-six Cents (\$10,673.26)

hereinabove referred to, the title to the quantity of sugar intended for said John Sexton & Company under the order bills of lading and the guaranty of said Frank Waterhouse & Co. hereinabove referred to.

VIII.

That upon disposal of the sugar intended for John Sexton & Company, as aforesaid, the proceeds will be applied toward the payment of the amounts due this garnishee defendant as hereinabove set out, and the balance, if any there be, will unless otherwise ordered by this Court, be paid to said Frank Waterhouse & Co., and in case such proceeds are insufficient to pay this garnishee defendant the amounts due it as aforesaid, then this garnishee defendant will demand and enforce payment of the difference or deficit from said Frank Waterhouse & Co. under its said guaranty.

IX.

That Two Hundred Fifty Dollars (\$250.00) is a reasonable sum to be allowed this garnishee defendant as attorney's fees herein.

WHEREFORE, having answered, this garnishee defendant prays that it be discharged upon its answer and recover judgment for its costs and disbursements herein. And that it have such other and further relief as to this Court may seem meet.

ALMON RAY SMITH,

Attorney for Garnishee Defendant. [11]

State of Washington,
County of King,—ss.

H. G. Hotchkiss, being first duly sworn, on oath deposes and says that he is the cashier of the National City Bank of Seattle, a national banking association, and one of the garnishee defendants in the above-entitled action; that he has read the foregoing answer, knows the contents thereof and the same is true, as he verily believes.

H. G. HOTCHKISS,

Subscribed and sworn to before me this 10th day of August, A. D. 1920.

RAY SMITH,

Notary Public. [12]

COPY.

LETTER OF CREDIT No. 1128
THE NATIONAL CITY BANK
of Seattle.

Seattle, Washington, May 17th, 1920.

\$65,100.00)

128,100.00) U. S. Currency.

210,000.00)

Kelly & Co., Ltd.,
Hong Kong, China.

Dear Sir:

We hereby authorize you to draw on The National City Bank, Seattle, Washington, at 30 days Sight for account of Frank Waterhouse & Co. of Seattle, Wn. for any sum or sums not exceeding in all

Sixty-five Thousand One Hundred
One Hundred Twenty-eight Thousand One Hundred
(1) Two Hundred Ten Thousand. . . . DOLLARS
for cost of merchandise to be shipped to Seattle,
Wash. covering 155; 305; 500 tons *standard white*
granulated sugar packed in double bags, quality
net shipping weight guaranteed by Lloyds and with
Hong Kong government certificates of inspection
and analysis.

The Drafts negotiated under this Credit must
be endorsed hereon and bear the clause: "Drawn
under Credit No. 1128 of the National City Bank,
Seattle, Washington, dated May 17th, 1920" and
advice thereof, in original and duplicate sent to
the National City Bank, Seattle, Washington, ac-
companied with Invoice, Consular Certificate and
set

entire set of negotiable bills of lading made out to
order of the shipper blank endorsed.

We hereby engage that drafts in compliance with
the terms of this Credit will be duly honored if
drawn on or before June 1st, 1920.

Insurance provided by shipper.

Your obedient servants,
THE NATIONAL CITY BANK.

H. G. HOTCHKISS,
Cashier.

Entered Folio —

H. WITHERSPOON,
Vice-President.

GUARANTY.

Seattle.

To the National City Bank,
Seattle.

Having received your Letter of Credit No. —

I

a copy of which is on the other side hereof, we do
hereby agree to its terms, and in consideration
myself

thereof, do bind ourselves to pay to you a sufficient
sum in Dollars, United States Currency, in this
City, to cover any drafts drawn and negotiated in
virtue of said Credit together with Commission at
— of one per cent.

I

We hereby give you specific claim and lien on all
goods and merchandise and proceeds thereof, for
which the negotiators of drafts drawn in virtue of
and

and

said Credit or the [13] National City Bank or
its correspondents may have paid or for which
they may have come under any engagements in
virtue of said Credit, all Policies of Insurance on
such goods and merchandise to an amount sufficient
to cover all advances and engagements under said
Credit, and all Bills of Lading given therefor, with
full power and authority to take possession and
dispose of the same at your discretion, at private
or public sale, with or without demand of perform-
me

ance or notice of sale to us or to the public, for your
security or reimbursement, including commission

for sale and guaranty and all expenses; unless on
my I

our application we provide payment in some other
way satisfactory to you.

I

We pledge to you as security for all and any in-
debtedness or liability existing or that may here-

me

after arise from us to you under said Letter of

I

Credit, all of said securities, and we further stipu-
late that all securities which shall be received here-
under may be held, and applied by you to secure
any and all indebtedness or liability existing or

me

which may hereafter arise from us to you under
said Letter of Credit.

Marine Insurance on said goods and merchandise
shall be effected in —— with such company or com-
panies and for such amount as you may direct; all
policies shall be assigned to you, and loss, if any
shall be made payable to you in Currency of the
United States of America.

In the event of the goods or merchandise being
shipped by or on board of a vessel carrying the flag

I

of a nation at war, we hereby agree to insure
against war risk, and failing to do so, you are au-

my

thorized to effect such insurance at our expense.

FRANK WATERHOUSE & Co.

By R. D. Smalley,

Treas. [14]

COPY.

No. 78443. ' Due 7-15-20.

Seattle, Wash., July 3, 1920.

\$500.00.

July 15, 1920 after date, for value received, I promise to pay to the order of The National City Bank of Seattle, at the Banking-House of said Bank, the sum of Five Hundred and no /100 Dollars, with interest at the rate of 8 per cent, per annum from maturity until paid, principal and interest payable in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waves presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit, and agrees to remain bound, notwithstanding any extension or extensions that may be made to any party liable on this note, and consent is hereby given to any such extension or extensions, and agrees, in case suit be brought to collect this note, or any part thereof, that at the option of the holder thereof, the venue of said suit may be laid in King County, Washington. As collateral security for the payment of this note and all other indebtedness now or hereafter owing from me to said Bank, I hereby pledge and deliver to payee the following security:

Order on Frank Waterhouse & Co. Amount due
about \$6000.00.

In case of default in the payment of this note or interest thereon, I authorize the holder of this obligation to sell, without notice to me, and at his option at public or private sale, the whole or any part of said security, and to apply the proceeds to the payment of this note and interest thereon, he accounting to me for the surplus, if any. In case of a deficiency, I promise to pay to the holder the amount thereof forthwith after the sale. At the option of the holder, one or more sales may be had thereunder. I hereby waive notice and advertisement of sale. The holder may purchase at any such sale. Nothing herein contained shall preclude a suit upon this note without resort to said collateral.

P. O. Address 212 Mehlhorn Bldg.

INTERNATIONAL TRADING CO. OF
AMERICA, INC.

G. W. Nelson,
Secy. and Treas.

Telephone No. E11. 1158.

Seattle, Washington, June 5, 1920.

For value received, I hereby assign, transfer and set over to the National City Bank of Seattle all my right, title and interest in and to the amount due us from Frank Waterhouse & Co., in connection with shipments of 500 tons of sugar from Kelley & Company, Limited, Hong Kong, China,

to Montgomery, Ward & Company of Chicago, Illinois, and authorize said Frank Waterhouse & Co. to pay to said National City Bank of Seattle the amount due under their Letter of May 13, 1920.

INTERNATIONAL TRADING CO. OF
AMERICA.

By G. W. Nelson,
Secy. and Treas.

Approved:

FRANK WATERHOUSE & COMPANY.

By R. D. Smalley,
Treasurer. [15]

Service of within answer and receipt of copy admitted this 10th day of August, 1920.

McCLURE & McCLURE,
Attorneys for Plaintiff.

[Endorsements]: Filed Aug. 10, 1920. [16]

[Caption and Title.]

Assignment of Judgment.

For value received, The Hale Company, a corporation, does hereby assign and transfer to Martin Rozema, that certain judgment rendered in the above-entitled action in favor of the plaintiff and against the defendant for the sum of Fifty-two Hundred (\$5200.00) Dollars, interest and costs, rendered on the 7th day of July, 1920.

IN WITNESS WHEREOF, The Hale Company, a corporation, has caused these presents to be executed by its Secretary thereunto duly authorized

and its corporate seal to be hereunto affixed this 31st day of May, 1921.

[Corporate Seal] THE HALE COMPANY.

By P. B. Nelson,

Secretary.

Subscribed and sworn to before me this 1st day of June, 1921.

[Notary Seal] MARGUERITE S. BRUNER,
Notary Public in and for the City and County of
San Francisco, State of California.

[Endorsements]: Filed Nov. 16, 1921. [17]

[Caption and Title.]

Notice of Substitution of Attorneys for Plaintiff.

To the above-named defendants and to all persons
interested in the above-entitled action:

NOTICE IS HEREBY GIVEN that the undersigned attorneys of record for the plaintiff have withdrawn from said action as attorneys for the plaintiff, and that the law firm of Hadley & Hadley may be and they are hereby substituted as attorneys for the plaintiff in the above-entitled action.

Dated this 8th day of June, 1921.

McCLURE & McCLURE,

Attorneys for Plaintiff.

[Endorsements]: Filed Nov. 16, 1921. [20]

[Caption and Title.]

**Amended Affidavit Controverting Answer of the
National City Bank, a Corporation, Garnishee
Defendant.**

State of Washington,
County of King,—ss.

Edgar S. Hadley, being first duly sworn, on oath deposes and says:

That he is one of the attorneys for Martin Rozema, the assignee of the judgment in the above-entitled action from The Hale Company, a corporation, which said assignment of judgment is now of record in this action, and the said Martin Rozema has succeeded to all the interests of the plaintiff corporation; that he makes this affidavit in behalf of said Martin Rozema for the purpose of controverting the answer of the National City Bank as garnishee defendant herein;

That said substituted plaintiff denies the allegations contained in the answer of said garnishee defendant wherein it denies that it, at the time of the service of said writ or at any time since, has been or is now indebted to the above-named defendant in any amount whatsoever or that it had in its possession at the time of the service of said writ, or at any time thereafter, prior to the date of answer, any effects of defendant in its possession or under its control; [21]

That said substituted plaintiff and this affiant have no knowledge as to the allegations contained

in paragraphs II, III, IV, V, VI, VII and VIII thereof, and therefore deny the same, except that affiant admits that said sugar arrived at Seattle, Washington, or or about July 16th, 1920, and admits the sale thereof to Montgomery Ward & Co. and John Sexton & Co. of Chicago, Illinois, and admits that bills of lading therefor were issued; and expressly denies that said bills of lading were endorsed, transferred and delivered to said garnishee defendant as in said answer stated; and in respect thereto alleges that if said bills of lading were endorsed and delivered, the same occurred after the service of said writ of garnishment upon said National City Bank, and further alleges that said garnishee defendant, National City Bank, had in its possession and under its control at the time of the service of said writ of garnishment upon it sums of money belonging to the said International Trading Company of America, a corporation, and was at said time indebted to the said International Trading Company of America, the amount of such indebtedness being in excess of the sums due upon the judgment of said The Hale Company, now the judgment of Martin Rozema; that said garnishee defendant has, since the service of said writ of garnishment and prior to the time of filing its answer, received for, and paid out, on behalf of said International Trading Company of America a large sum of money, to wit: the sum of about \$35,000.00;

That this affiant has good reason to believe and does believe that the answer of said garnishee de-

fendant is incorrect in the particulars above stated.
EDGAR S. HADLEY.

Subscribed and sworn to before me this 9th day
of June, A. D. 1921.

[Notary Seal] CLYDE M. HADLEY,
Notary Public in and for the State of Washington,
Residing at Seattle. [22]

Service of the within notice is accepted and receipt of copy admitted this 11th day of June, 1921.

ALMON RAY SMITH,
Attorney for Gar. Defendant.

[Endorsements]: Filed Jun. 11, 1921. [23]

[Caption and Title.]

Waiver of Jury.

The parties hereto hereby stipulate that this cause
be tried before the Court and without a jury.

Dated this 11th day of December, 1922.

HADLEY, HAY & HADLEY & BAUSMAN, OLD-
HAM BULLITT & EGGERMAN,
Attorneys for Plaintiff.

ALMON RAY SMITH & POE & FALKNOR,
Attorneys for Garnishee Defendant.

[Endorsements]: Filed Dec. 12, 1922. [24]

In the District Court of the United States for the
Western District of Washington, Northern
Division.

No. 5003.

THE HALE COMPANY, a Corporation (MAR-
TIN ROZEMA, Assignee of the Judgment),
Plaintiff,

vs.

INTERNATIONAL TRADING COMPANY OF
AMERICA, a Corporation,
Defendant.

THE NATIONAL CITY BANK OF SEATTLE,
a National Banking Association,
Garnishee Defendant.

Findings of Fact and Conclusions of Law.

This cause having been heretofore and at the November term 1922 and on the 12th day of December, 1922, submitted to the Honorable Edward E. Cushman, Judge of the above-entitled Court, for decision, a jury having been waived by all parties by stipulation in open Court, thereafter reduced to writing and filed herein, upon the affidavit and writ of garnishment, the answer of the garnishee defendant and the affidavit of the plaintiff controverting the answer of the garnishee defendant, the plaintiff appearing by Messrs. Hadley, Hay & Hadley and Messrs. Bausman, Oldham, Bullitt & Eggerman, his attorneys, the garnishee defendant appearing by Messrs. Poe & Falknor and Almon Ray Smith, its

Attorneys, and William T. Laube, as trustee of the bankrupt estate of Frank Waterhouse & Company, intervenor, also appearing by Messrs. Grinstead & Laube, J. A. Laughlin of counsel, his attorneys, and the Court after hearing the evidence and the arguments of counsel for the respective parties, and being fully advised in the premises, here and now makes the following findings of fact and conclusions of law: [25]

FINDINGS OF FACT.

I.

That at the time of the service of said writ of garnishment on the National City Bank of Seattle, garnishee defendant, said garnishee defendant was not indebted to the defendant International Trading Company of America in any amount whatsoever and was not indebted to said defendant International Trading Company of America at any time subsequent to the service of said writ prior to the service of the answer of the garnishee defendant.

II.

That at the time of the service of said writ of garnishment, The National City Bank of Seattle, garnishee defendant, had no effects or personal property of the defendant International Trading Company of America in its possession or under its control and at no time subsequent to the service of said writ and prior to the service of the answer had any effects or personal property of said defendant in its possession or under its control.

III.

That Two Hundred Fifty Dollars (\$250.00) is a

reasonable sum to be allowed the garnishee defendant as attorneys' fees herein.

Done in open Court this 21st day of December, 1922.

EDWARD E. CUSHMAN,
Judge.

From the foregoing findings of fact, the Court here and now makes the following conclusions of law:

I.

That the National City Bank of Seattle, garnishee defendant, is entitled to be discharged and dismissed.

II.

That said garnishee defendant is entitled to a judgment [26] against Martin Rozema, the assignee of plaintiff, for its costs and disbursements herein, including attorneys' fees in the sum of Two Hundred Fifty Dollars (\$250.00).

Done in open Court this 21st day of December, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsements]: Filed Dec. 21, 1922. [27]

[Caption and Title.]

Judgment.

This cause having been heretofore and at the November term 1922 and on the 12th day of December, 1922, submitted to the Honorable Edward E.

Cushman, Judge of the above-entitled court, for decision, a jury having been waived by all parties by stipulation in open Court, thereafter reduced to writing and filed herein, upon the affidavit and writ of garnishment, the answer of the garnishee defendant and the affidavit of the plaintiff controverting the answer of the garnishee defendant, the plaintiff appearing by Messrs. Hadley, Hay & Hadley and Messrs. Bausman, Oldham, Bullitt & Eggerman, his attorneys, the garnishee defendant appearing by Messrs. Poe & Falknor and Almon Ray Smith, its attorneys, and William T. Laube, as trustee of the bankrupt estate of Frank Waterhouse & Company, intervenor, also appearing by Messrs. Grinstead & Laube, J. A. Laughlin of counsel, his attorneys, and the Court after hearing the evidence and the arguments of counsel for the respective parties, and being fully advised in the premises and having made its findings of fact and conclusions of law herein, [28]

IT IS CONSIDERED, ORDERED, ADJUDGED and DECREED that The National City Bank of Seattle be and it is hereby discharged and dismissed, and

IT IS FURTHER CONSIDERED, ORDERED, ADJUDGED and DECREED that The National City Bank of Seattle have and recover of and from Martin Rozema a judgment for its costs and disbursements herein to be taxed and attorneys' fees in the sum of Two Hundred Fifty Dollars (\$250.00).

Done in open court this 21st day of December,
1922.

EDWARD E. CUSHMAN,
Judge.

Plaintiff excepts and exception allowed.

EDWARD E. CUSHMAN,
Judge.

[Endorsements]: Filed Dec. 21, 1922. [29]

[Caption and Title.]

Proposed Bill of Exceptions.

This was a garnishment proceeding against the National City Bank of Seattle, garnishee defendant, by Hale Company, a corporation, plaintiff, upon a judgment obtained in said court against the International Trading Company of America, a corporation, principal defendant, which said judgment was assigned to Martin Rozema, the present plaintiff.

The issue in this proceeding came on duly and regularly for hearing before the Hon. Edward E. Cushman, one of the Judges of the above-entitled court, without the intervention of a jury, the parties aforesaid by their counsel, having waived a jury according to the statute in such case made and provided; the plaintiff appearing by Messrs. Hadley, Hay & Hadley, and Bausman, Oldham, Bullitt & Eggerman, his counsel, and the garnishee defendant appearing by Messrs. Poe & Falknor, and

(Testimony of George W. Nelson.)

Allan Ray Smith, its counsel, whereupon the following testimony was produced and proceedings had, to wit:

Testimony of George W. Nelson, for Plaintiff.

GEORGE W. NELSON, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

My occupation is that of importing and exporting. During [37] the year 1920, I was Secretary, Treasurer and General Manager of the International Trading Company of America, a corporation, and am still with such company. We sold Montgomery, Ward & Company 500 tons of sugar which we were to get from Kelley & Company of Hong Kong, China. In order to have that sugar shipped here, it was necessary for us to open a letter of credit in Hong Kong to cover the payment of the sugar. We went to the National City Bank to have it done, but they refused to open it for us. Mr. Witherspoon, the vice-president, stated that due to the speculative market in sugar at that time, they could not open it for us, as we did not have credit standing enough to cover a quarter of a million dollars worth of sugar, but suggested that I see Frank Waterhouse & Co., stating at that time that perhaps it would cost me some of my profits, but he thought they could handle the transaction for me. I went up and saw Mr. Boxer, manager of the foreign department of Frank Waterhouse & Co., taking with me the or-

(Testimony of George W. Nelson.)

iginal letter of credit from Chicago issued for the account of Montgomery, Ward & Co. Mr. Boxer called in Mr. Smalley, the treasurer of Frank Waterhouse & Co., and they wrote up a contract between Frank Waterhouse & Co. and the International Trading Company of America covering the Montgomery, Ward & Co. sugar transaction. (Contract referred to here offered in evidence and received and marked Plaintiff's Exhibit No. 1.)

Plaintiff's Exhibit No. 1.

FRANK WATERHOUSE & COMPANY

DOMESTIC TRADE DEPARTMENT
E. J. BOXER, Manager

NEW YORK
CHICAGO
SAN FRANCISCO
CLEVELAND
TACOMA
VANCOUVER, B. C.
KOBE, JAPAN

Seattle, U. S. A.

May 13th, 1920.

International Trading Company of America, Inc.,
Seattle, Washington.

Gentlemen:

Acting upon your request of the 13th inst., we agree to assist you in transferring funds covering sales made by you to Montgomery Ward & Company, Chicago of 500 tons of sugar from Hong Kong, this sugar having been purchased by you from Kelley & Company, Limited, Hong Kong.

In assisting you to transfer funds enabling you to complete the deal as between the seller and buyer, it is distinctly understood that all purchases and sales of the above mentioned sugar were handled

(Testimony of George W. Nelson.)

solely by you and your associates, and that our only interest in this matter is in the transfer of finances.

In consideration of our assisting you in transfer of finances you agree to allow us a fee of one third ($1/3$) of the net profit on this deal; all letters of credit are to be assigned to us thru our banking connections, finances will be handled and on the consummation of this deal, when sugar arrives and is shipped from Seattle and all drafts are paid, we will then render an accounting to you, deducting from the gross profits any expenses incurred, viz., telegraph and cable charges, interest charges, etc., and of the remaining balance we will remit to you two thirds ($2/3$).

Yours very truly,

FRANK WATERHOUSE & COMPANY.

EJB:J

By E. J. Boxer.

E. J. BOXER,

Mgr., Domestic Trade Dept.

Accepted:

INTERNATIONAL TRADING COMPANY OF
AMERICA, INC.

By G. W. Nelson,

Secretary & Treasurer.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

After entering into this agreement, Mr. Boxer and I went to the National City Bank and saw Mr. Hotchkiss. We had written out the form, or the wording, of the letter of credit we wanted

(Testimony of George W. Nelson.)

opened in Hong Kong, on a little slip of paper, and Mr. Boxer instructed Mr. Hotchkiss to open a letter of credit in Hong Kong as per the writing on this slip of paper which [38] Mr. Boxer presented, covering this 500 tons of sugar. Mr. Hotchkiss agreed that he would open the credit immediately for this sugar. We had no other orders for sugar at that time and there was nothing said about any other orders for sugar.

I was in the bank nearly every day on some matter or other, and within two or three days after the contract with Frank Waterhouse & Co. had been entered into (Plaintiff's Ex. 1) I showed it to Mr. Witherspoon, because he had been kind enough to send me to Frank Waterhouse & Co. where I had been able to get the accommodation.

The letter of credit you hand me is the one issued by the First National Bank of Chicago for the account of Montgomery, Ward & Co., covering the 500 tons of sugar we sold them. (Letter of credit referred to received in evidence and marked Plaintiff's Exhibit No. 2.) I transferred it to Frank Waterhouse & Co.

Plaintiff's Exhibit No. 2.

No. G. C. A6250. \$234,000*

Capital and Surplus \$22,000,000.00
\$234,000.00 (U. S. Currency.)

THE FIRST NATIONAL BANK OF CHICAGO.

Chicago, May 15, 1920.

Messrs. International Trading Company of America,
Inc., Seattle, Washington.

Gentlemen:

We hereby authorize you to value on the First National Bank of Chicago, at sight for any sum or sums not exceeding in all Two Hundred & Thirty-four Thousand Dollars (U. S. Currency) for account of Messrs. Montgomery Ward & Company, Chicago, Illinois, for cost of 500 tons Standard White Sugar to be shipped to Chicago, Illinois, @ \$23.40 F. O. B. cars Seattle.

The Bills of Lading must be issued to the order of Shippers' and endorsed in blank.

The Shipment must be completed and the Bill drawn on or before August 1, 1920, and the advice thereof ~~(in duplicate)~~ sent to The First National Bank of Chicago, accompanied by Bill of Lading and abstract of Invoice, on receipt of which Documents the Bills will be duly honored.

~~The remaining Bills of Lading with certified Invoices and Consular Certificates must be sent by the Bank or Banker negotiating drafts to — for account of the First National Bank of Chicago and a certificate to that effect must accompany draft.~~

(Testimony of George W. Nelson.)

We hereby agree with drawers endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that the same shall be duly honored upon presentation at the counter of The First National Bank of Chicago.

This credit is confirmed and irrevocable.

Insurance

Drafts under this Credit must bear upon their face the words:

Drawn under The First National Bank of Chicago. Credit No. G. C. A6250. Dated May 15, 1920.

If desired, draft drawn under this credit will be paid at the counter of the National City Bank of Seattle, Seattle, Washington.

Respectfully Yours,

[Signature Illegible.]

Countersigned W. G. STRAND, Mgr.

[Printed across face:] Original Copy.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

Later, in June, I had some further dealings with the bank in regard to the Montgomery, Ward & Co. order. I went to Mr. Witherspoon and requested a loan of \$500 for the company. He asked me about this sugar transaction again, and what collateral I would be willing to give, and when I told him again about the contract with Waterhouse & Co., he suggested that I give him an order on Waterhouse & Co., an assignment of our two-

(Testimony of George W. Nelson.)

thirds of the profit in the Montgomery, Ward & Co. transaction as collateral security for this loan. I told him I would give them an order, and if I remember right, Mr. Witherspoon dictated the way he wanted the order written, and asked me to take it up and have Waterhouse & Co. approve it, which I did, and Mr. Smalley approved it, and I turned it over to the National City Bank, together with a copy of my contract with Waterhouse & Co. on the Montgomery, Ward & Co. transaction, signed [39] the note, and he extended the loan. The assignment and note are pleaded in the answer. (Assignment and note referred to here identified by witness and received in evidence, marked respectively Plaintiff's Exhibit No. 3 and Plaintiff's Exhibit No. 4.)

Plaintiff's Exhibit No. 3.

Seattle, Washington, June 5, 1920.

For value received, I hereby assign, transfer and set over to The National City Bank of Seattle all my right, title and interest in and to the amount due us from Frank Waterhouse & Co., in connection with shipments of 500 tons of sugar from Kelley & Company, Limited, Hongkong, China, to Montgomery, Ward & Company of Chicago, Illinois, and authorize said Frank Waterhouse & Co., to pay said National City Bank of Seattle the amount due under their letter of May 13, 1920.

INTERNATIONAL TRADING CO. OF
AMERICA.

By G. W. Nelson,
Sec'y & Treasurer.

Approved:

FRANK WATERHOUSE & COMPANY.

By R. D. SMALLEY,

Treasurer.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 4.

No. 77417 Due —

\$500.00

Seattle, Wash., June 4, 1920.

July 3-20 after date, for value received, I promise to pay to the order of The National City Bank of Seattle, at the Banking-house of said Bank, the sum of Five Hundred and No/100 Dollars, with interest at the rate of 8 per cent. per annum from mat until paid, principal and interest payable in U. S. Gold Coin. For value received, each and every party signing or endorsing this note hereby waives presentment, demand, protest and notice of non-payment thereof, binds himself thereon as a principal, not as a surety, and promises in case suit is instituted to collect the same or any portion thereof, to pay such additional sum as the Court may adjudge reasonable as attorney's fees in such suit, and agrees to remain bound, notwithstanding any extension or extensions that may be made to any party liable on this note, and consent is hereby given to any such extension or extensions, and agrees, in case suit be brought to collect this note, or any part thereof, that at the option of the holder hereof, the venue of said suit may be laid in King County, Washington. As collateral security for the payment of this note and

all other indebtedness now or hereafter owing from me to said Bank, I hereby pledge and deliver to payee the following security:

Order on Frank Waterhouse & Co., amount due about \$6,000.

In case of default in the payment of this note or interest thereon, I authorize the holder of this obligation to sell, without notice to me, and at his option at public or private sale, the whole or any part of said security, and to apply the proceeds to the payment of this note and interest thereon, he accounting to me for the surplus, if any. In case of a deficiency, I promise to pay to the holder the amount thereof forthwith after the sale. At the option of the holder, one or more sales may be had thereunder. I hereby waive notice and advertisement of sale. The holder may purchase at any such sale. Nothing herein contained shall preclude a suit upon this note without resort to said collateral.

P. O. Address _____

Telephone No. _____

INTERNATIONAL TRADING CO. OF AMERICA, INC.

G. W. Nelson,
Sec'y & Treas.

[Stamped across face:] The National City Bank of Seattle. Renewed, Jul. 6, 1920. L. & D.

[On Reverse Side]:

G. W. NELSON.

[Stamp]

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

(Testimony of George W. Nelson.)

The reference in the assignment of the amount due under their letter of May 13th, 1920, refers to the contract between Waterhouse & Co. and the International Trading Co. which has been marked Plaintiff's Exhibit No. 1. A copy of that contract was given to the bank along with that assignment.

On May 19, 1920, we secured an order from John Sexton & Co. and on May 20th, we received a notice from the Seattle National Bank that they had been advised by telegraph that a credit had been issued in our favor that day.

On May 21st or 22d, I again went to Waterhouse & Co. and entered into another transaction or contract with them covering the purchase of 155 tons of sugar for John Sexton & Co. This contract was dated May 22d, and is in identical language with the other with the exception of the amount of sugar and the purchaser. (Contract referred to here received in evidence and marked Plaintiff's Exhibit No. 5.)

Plaintiff's Exhibit No. 5.**FRANK WATERHOUSE & COMPANY**

DOMESTIC TRADE DEPARTMENT
E. J. BOXER, Manager.

NEW YORK
CHICAGO
SAN FRANCISCO
CLEVELAND
TACOMA
VANCOUVER, B. C.
KOBE, JAPAN

Seattle, U. S. A.

May 22, 1920.

International Trading Company of America, Inc.,
Seattle, Washington.

Gentlemen:

Acting upon your request of the 13th inst., we agree to assist you in transferring funds covering sales made by you to John Sexton Company, Chicago, of 155 tons of sugar from Hong Kong, this sugar having been purchased by you from Kelley & Company, Limited, Hong Kong.

In assisting you to transfer funds enabling you to complete the deal as between the seller and buyer, it is distinctly understood that all purchases and sales of the above mentioned sugar were handled solely by you and your associates, and that our only interest in this matter is in the transfer of finances.

In consideration of our assisting you in transfer of finances you agree to allow us a fee of one third ($\frac{1}{3}$) of the net profit on this deal; all letters of credit are to be assigned to us thru our banking connections, finances will be handled and on the consummation of this deal, when sugar arrives and is shipped from Seattle and all drafts are paid, we will then render an accounting to you, deducting

(Testimony of George W. Nelson.)

from the gross profits any expenses incurred, viz., telegraph and cable charges, interest charges, etc., and of the remaining balance we will remit to you two thirds (2/3).

Yours very truly,

FRANK WATERHOUSE & COMPANY.

EJB:J

By E. J. Boxer.

E. J. BOXER,

Mgr., Domestic Trade Dept.

Accepted:

INTERNATIONAL TRADING COMPANY OF
AMERICA, INC.

By G. W. Nelson,
Secretary & Treasurer.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

In the copy of the letter of credit attached to the answer of the garnishee defendant there are three bunches of sugar mentioned, one for 550 tons for Montgomery, Ward & Co., one for 155 tons for John Sexton & Co., and 305 tons for a purchaser in St. Paul.

Kelly & Co. of Hong Kong shipped short. They did not ship the 305 tons for the St. Paul purchaser, and only 85 tons of the 155 tons intended for John Sexton & Co. [40]

Cross-examination.

We were negotiating for the sale of sugar to half a dozen eastern buyers. One of them was Mont-

(Testimony of George W. Nelson.)

gomery, Ward & Co., another John Sexton & Co., and someone in St. Paul another. We were contemplating buying that sugar in Hong Kong and were unable to finance the transactions. We got letters of credit from three eastern buyers, one at a time, and we transferred them to Waterhouse & Co., one at a time, and entered in similar agreements with Waterhouse & Co. with reference to the division of the profits that might be made. Waterhouse & Co. went to the National City Bank and got this letter of credit. All the sugar was shipped in one shipment at one time to the order of Kelley & Co. which drew one draft for the entire shipment against the letters of credit. My understanding was that there was more than one letter of credit. I never saw one. I do not know that there was but one letter of credit, one guarantee by Waterhouse & Co. and I want the Court to understand that distinctly.

The contracts we entered into with Frank Waterhouse & Co. were all similar, word for word. We had three buyers of sugar in the east and we entered into similar contracts with respect to each of these buyers as they came in. We did not buy the sugar at one time for one shipment, but you are right that they were all shipped at once. All the contracts with Frank Waterhouse contained this provision "When sugar arrives and is shipped from Seattle and all drafts are paid." After all drafts were paid our profits were to come in. "When all drafts are paid" means paid by the

(Testimony of George W. Nelson.)

purchasers, and I presume the drafts of the seller also. As far as I know the National City Bank paid the Kelley & Co. draft. I do not know whether it has been reimbursed.

I was not present when the letter of credit was [41] *signed* signed by Frank Waterhouse & Co. at the National City Bank and do not know when it was signed or issued. I just learned the other day from a remark of Mr. Smalley that the National City Bank had established only one letter of credit on these purchases in Hong Kong.

Testimony of H. G. Hotchkiss, for Plaintiff.

H. G. HOTCHKISS, produced as a witness on the part of the plaintiff, and having been first duly sworn, testified as follows:

I am the Cashier of the National City Bank. I was served with a subpoena to produce certain records of the bank. The first cable I sent with reference to the sugar under consideration was on May 17, 1920, to the International Banking Corporation at Hong Kong, for the purchase of 500 tons of sugar for a total of \$210,000, signed by the bank's cable name.

(Cable referred to received in evidence and marked Plaintiff's Exhibit No. 6.)

Plaintiff's Exhibit No. '6.

5/17/1920.

statesbank	International Banking Corporation
hongkong	Hong Kong China
abvud	will accept
erkak	draft(s) at 30 days sight
etliz	drawn by
kelco	Kelly & Co. Ltd.
duloc	covering
uralb	500 tons
saurm	standard (s)
weper	white
gypef	granulated
sugar	sugar
nybyg	packed in
ercif	double
avawy	bag (s)
onnja	quality (of)
kuhav	nett
rogto	shipping
vyrge	weight (s)
hagak	guaranteed by
joelb	Lloyds
alavk	and
wisaz	with
hongkong	Hong Kong
gyiwa	government (s)
bynra	certificates of
ikijp	inspection

alavk	and
akzlo	analysis
grovs	full
razuz	set (s)
azkoz	bill (s) of lading
faocs	endorsed
idvud	in
aztsa	blank (s)
ipyto	invoice (s)
dicge	consular
ipyto	invoice (s)
ascit	attached (to)
mosvo	210000
epusd	dollars
dowge	C. I. F.
Seattle	Seattle
ergeh	draft (s)
klujf	must be
etgar	drawn
alavk	and
rivec	shipment (s) from
hongkong	Hong Kong
ejobs	prior (to)
ivcep	June 1st.
mezor	1920
natcitbank	The National City Bank

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

One or two days before this, about May 15th, Mr. Boxer and Mr. Nelson came in together in

(Testimony of H. G. Hotchkiss.)

reference to establishing a letter of credit for the purchase of the 500 tons of sugar from Kelley & Co. in the Orient, and as a result of that conversation I sent such cable. On this May 15th, the only thing under consideration was the purchase of 500 tons of sugar which they told me had been sold to Montgomery, Ward & Co. of Chicago.

Plaintiff's Exhibit No. 2, which is the Montgomery, Ward and Company letter of credit in favor of the International Trading Co. was probably delivered to the bank about May 18th and remained there in its custody.

On May 17th, 1920, the bank had drawn a letter of credit, (Letter referred to received in evidence and marked Plaintiff's Exhibit No. 7.)

Plaintiff's Exhibit No. 7.

THE NATIONAL CITY BANK OF SEATTLE.

Capital \$500,000.00. Surplus \$100,000.00.

LETTER OF CREDIT

No. 1128

**THE NATIONAL CITY BANK
OF SEATTLE**

Seattle, Washington, May 17, 1920.

M Kelly & Co., Ltd.

Hong Kong, China.

\$ 65,100.00)

128,100.00) U. S. Currency

210,000.00)

Dear Sir:

We hereby authorize you to draw on
THE NATIONAL CITY BANK, SEATTLE,

WASHINGTON, at 30 days Sight for account of
Frank Waterhouse & Co. of Seattle, Wn. for any
sum or sums not exceeding in all

Sixty-five Thousand One Hundred....

One Hundred Twenty-eight Thousand

One Hundred..... DOLLARS

Two Hundred Ten Thousand.....

for cost of merchandise to be shipped to Seattle,

155

305

Wash. Covering 500 tons standard white granu-
lated sugar packed in double bags, quality nett
shipping weight guaranteed by Lloyds and with
Hong Kong government certificates of inspection
and analysis.

The Drafts negotiated under this Credit must be
endorsed hereon and bear the clause: "Drawn
under Credit No. 1128 of THE NATIONAL CITY
BANK, SEATTLE, WASHINGTON, dated May
17th, 1920" and advice thereof, in original and dupli-
cate sent to THE NATIONAL CITY BANK, SE-
ATTLE, WASHINGTON, accompanied with In-
voice, Consular Certificate and entire set of nego-
tiable Bills of Lading made out to order of the
shipper blank endorsed.

We hereby engage that drafts in compliance with
the terms of this Credit will be duly honored if
drawn on or before June 1st, 1920.

Insurance provided by shipper.

Your obedient servants,

THE NATIONAL CITY BANK.

Entered, Folio —.

H. Witherspoon, Vice President.

H. G. Hotchkiss,

Cashier.

[Printed across face]: Copy.

GUARANTY

Seattle,

To the National City Bank,

Seattle.

Having received your Letter of Credit No. a

I

copy of which is on the other side hereof, we do hereby agree to its terms, and in consideration myself

thereof, do bind ourselves to pay to you a sufficient sum in Dollars, United States Currency, in this City, to cover any drafts drawn and negotiated in virtue of said Credit, together with commission at of one per cent.

I

We hereby give you specific claim and lien on all goods and merchandise and proceeds thereof, for which the negotiators of drafts drawn in virtue of and and said Credit or the National City Bank, or its correspondents may have paid or for which they may have come under any engagements in virtue of said Credit, all Policies of Insurance on such goods and merchandise to an amount sufficient to cover all

advances and engagements under said Credit, and all Bills of Lading given therefor, with full power and authority to take possession and dispose of the same at your discretion, at private or public sale, with or without demand of performance or notice of

me

sale to us or to the public, for your security or reimbursement, including commission for sale and

my

guaranty and all expenses; unless on our applica-

I

tion we provide payment in some other way satisfactory to you.

I

We pledge to you as security for all and any indebtedness or liability existing or that may here-

me

after arise from us to you under said Letter of

I

Credit, all of said securities, and we further stipulate that all securities which shall be received hereunder may be held, and applied by you to secure any and all indebtedness or liability existing or

me

which may hereafter arise from us to you under said Letter of Credit.

Marine Insurance on said goods and merchandise shall be effected in with such company or companies and for such amount as you may direct; all policies shall be assigned to you, and loss, if any shall be made payable to you in Currency of the United States of America.

(Testimony of H. G. Hotchkiss.)

In the event of the goods or merchandise being shipped by or on board of a vessel carrying the flag

I

of a nation at war, we hereby agree to insure against war risk, and failing to do so, you are au-

my

thorized to effect such insurance at our expense.

FRANK WATERHOUSE & CO.

By R. D. Smalley,
Treas.

[Printed in margin]:

GUARANTY

FOR

Letter of Credit No.....
dated.....

IN FAVOR OF

.....
.....

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

but on that date it was not the same as it [42] now appears. After that date two amounts were added to it: \$128,000 covering 305 tons of sugar, and \$65,000 covering 155 tons of sugar.

The letter of credit established by the National City Bank on May 17, 1920, was for \$210,000 covering 500 tons of Standard White Granulated sugar, with certain qualifications and requirements. That letter was established in accordance with the

(Testimony of H. G. Hotchkiss.)

cablegram—Plaintiff's Exhibit No. 6—and was to cover the purchase of sugar made by the International Trading Company to fulfill its contract with Montgomery, Ward & Co. The credit was issued for the account of Frank Waterhouse & Co. to fulfill the Montgomery, Ward & Co. transaction, the purchase by Montgomery, Ward & Co. from the International Trading Co. of 500 tons of White Granulated sugar. The next step in the transaction was the receipt by the bank, on or about May 18th, of the letter of credit of Montgomery, Ward & Co.

On May 20th, we increased this letter of credit of the 17th to the second amount there, \$128,000, which covers the purchase of the 305 tons. Our cable of that date was simply to increase the original credit as the transaction shows here.

(Cable referred to received and marked Plaintiff's Exhibit No. 8.)

Plaintiff's Exhibit No. 8.

5/20/1920.

Urgent

Statesbank

Hongkong

uglep

jifty

kelco

igdav

upwit

upanj

International Banking
Corporation

Hong Kong, China.

referring to our telegram
17th

letter credit

Kelly & Co.

increase it

300 tons

5 tons

(Testimony of H. G. Hotchkiss.) .

mopan	125,000
mifze	3,100
epusd	dollars
addub	on account of
intraco	International Trading Co.
	of America
nateitbank	National City Bank of
	Seattle

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

We sent this cable at the request of Frank Waterhouse & Co. That sugar was sold to a St. Paul house. As a matter of fact, that transaction failed entirely, so that there was no liability one way or the other on that St. Paul transaction.

The next step was on May 22d, when we were advised that Sexton & Co. had established a credit for the purchase of 155 tons of Standard White Granulated sugar, and upon receiving that advice we increased our credit in the Orient with \$65,100 covering the 155 tons, as is evidenced by this cable of May [43] 22d. (Cable referred to received in evidence and marked Plaintiff's Exhibit No. 9.)

(Testimony of H. G. Hotchkiss.)

Plaintiff's Exhibit No. 9.

May 22, 1920.

Urgent

Statesbank

International Banking
Corporation

Hongkong

Hong Kong, China.

uglep

referring to our telegram
17th

kelco

Kelley & Co. Ltd.

jifty

letter of credit

irfel

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irems

irrevocable (ly)

igdav

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150 tons

upanj

5 tons

mojum

65000

lidif

100

epusd

dollars

nateitbank

National City Bank of
Seattle

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

On May 22d, I altered the letter of credit of May 17th by including in it the \$65,100 covering the 155 tons of sugar.

After the instrument was complete (Plaintiff's Ex. No. 7) with all the amounts in, I had Mr. Smalley, Treasurer of Frank Waterhouse & Co. sign the guarantee on the back here. It was put

(Testimony of H. G. Hotchkiss.)

on after May 22d, 1920, I can't tell the exact date. I don't know whether it was a month after. My recollection is that it was two or three days or a week. I can't tell the exact date. It was after May 22d, within a few days. It was an oversight in not having the guarantee added. We generally have the guarantee put on two or three days after we draw the letter. This letter was drawn on the 17th, but the guarantee was not put on there on the 19th. We were holding the letter because we knew there were to be some additions to it. I had the information from Mr. Boxer. We didn't have anything firmly in hand, we had no letter established, no advice that any other letters had been established on May 17th. We would only issue our letter upon either the receipt by us of letters established by the purchasers, or telegraphic advice, or some communication that such a letter had been issued and was on the way.

On May 23d, we received the letter established by Sexton & Co., and that remained in our hands at all times.

(Letter of credit referred to received in evidence and marked Plaintiff's Exhibit No. 10.)

Plaintiff's Exhibit No. 10.

834

Commercial Credit
For Domestic Use

THE CORN EXCHANGE NATIONAL BANK
OF CHICAGO.

CAPITAL AND SURPLUS \$10,000,000.

No. 1627.

\$72,850.00 U. S.

Chicago, May 20th, 1920.

To International Trading Company of America, Inc.,
Gentlemen, Seattle, Washington.

We hereby authorize you to draw on The Seattle National Bank, in Seattle at sight for any sum or sums not exceeding in all Seventy Two Thousand Eight Hundred Fifty Dollars U. S. Gold for account of John Sexton & Company, Chicago for invoice cost of One Hundred Fifty Five tons standard white granulated sugar at \$23.50 net per 100 pounds packed in double sacks F. O. B. cars Seattle, Washington to be shipped to John Sexton & Company, Chicago. Immediate shipment from Hong Kong, China.

Railroad Bills of Lading issued to the order of the shipper and Certificates by Hong Kong Government and Lloyd's endorsed in blank together with invoices must accompany drafts covering quality, net shipping weights, inspection and analysis.

The Shipment must be completed and the drafts drawn by August 20th 1920.

We hereby agree with the drawers, endorsers and bona fide holders of drafts drawn under and in compliance with the terms of this credit that the same shall be duly honored upon presentation at the office of The Seattle National Bank, Seattle, Washington.

Drafts under this Credit must bear upon their face the words: "Drawn under Corn Exchange National Bank of Chicago, Credit No. 1627 dated May 20th, 1920." This Credit is irrevocable up to and including August 20th, 1920.

We are, Gentlemen,

Yours faithfully,

OWEN I. REEVES V. P.

JOHN S. COOT, Asst. Cash.

148590. Plaintiff's Exhibit "B." Filed Sep. 27, 1921. George A. Grant, Clerk. By Benj. C. Levy, Deputy. Ent'd—5.

IN LOCK BOX NO. 9/9.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

(Testimony of H. G. Hotchkiss.)

The next step in the transaction was on June 23, 1920, when we accepted the draft drawn by Kelley & Co. for \$244,000 payable thirty days after date. I accepted this draft personally on behalf of the bank. The paper you have showed me [44] is the draft.

(Draft referred to received in evidence and marked Plaintiff's Exhibit No. 11.).

Plaintiff's Exhibit No. 11.



For
May 31st, 1921
ON
of this First of Exchange (Second unpaid)
Hong Kong, the sum of Two hundred forty
and forty six cents U.S. Cts.
Drawn under Irrevocable Credit cabled
through International Bank, May 17th.
KEEFEY & Co., Ltd.
Manager.
Adm. 12/12/21
5003 D146 Ex 11

May 31st,



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A collection of Hong Kong postage stamps, including 2 Dollar and 5 Dollar denominations, featuring a central figure and the text 'HONG KONG'. The stamps are arranged in a grid-like fashion, with some overlapping. The central figure is a person, possibly a deity or a historical figure, seated and holding a staff or scepter. The text 'HONG KONG' is visible on the stamps, along with the denomination '2 DOLLARS' and '5 DOLLARS'. The stamps are framed by decorative borders.

FOR COLLECTION ONLY

NEW YORK

THE ORC

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11/13

24573541T

(Testimony of H. G. Hotchkiss.)

The documents that our letter called for accompanied the draft and at that time I had seen them. Our letter of credit called for "Shipping weights guaranteed by Lloyds and Hong Kong Government certificates of inspection and analysis."

The documents you show me are the Hong Kong Government certificates with Lloyds guarantee attached, and these documents accompanied the draft.

(The documents referred to were received in evidence, the analysis being marked Plaintiff's Exhibit No. 12, and the certificates of weight were marked Plaintiff's Exhibit No. 13.)

Plaintiff's Exhibit No. 12.

Hongkong Agency No. 790.

We the undersigned Lloyd's Agents at the Port of Hongkong, Hereby Certify we have carefully examined the attached Reports, and believe that full confidence may be placed in same.

GILMAN & CO., LTD.

G. Miskin,

Director.

Lloyd's Agents.

Fee for Certificate \$5.00

Hongkong, 31st May, 1920.

[Stamp]:

Gilman & Co., Ltd.

Lloyd's Agents

Hong Kong.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

Original 9 in
Lab. No. C681.

(M. 185.)

G. R.
Government Laboratory,
Hongkong, 29th May, 1920.

Seal.

Substance for analysis:—Granulated White Sugar (Java No. 24).

Marks:— 1352 Bags ex Yuen Fat Hong.

[In Diamond-shaped Character]

I. T. C.
K 9

Seattle (from a consignment of 5258 Bags).

Received:—From Messrs. Lammert Bros., on the 29th May, 1920.

RESULTS OF ANALYSIS.

Sugar (Direct Polarization) 98.5%

Signed. E. R. DOVEY,
Government Analyst.

[Stamp]: Gilman & Co., Ltd.

Lloyd's Agents,

Messrs. Kelley & Co.

Hongkong.

Hong Kong.

148590. Plaintiff's Exhibit "J." 23. Filed Sep. 27, 1921. George A. Grant, Clerk. By Benj. C. Levy, Deputy. Ent'd—5.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

Plaintiff's Exhibit No. 13.

Hongkong Agency No. 793

We the undersigned Lloyd's Agents at the Port of Hongkong, Hereby Certify that we have carefully examined the attached Weight Report, and believe that full confidence may be placed in same.

GILMAN & CO., LTD.

G. Miskin,

Director.

Fee for Certificate \$3.00

Lloyd's Agents.

Hongkong, 1st June, 1920.

[Stamp]:

Gilman & Co., Ltd.

Lloyd's Agents

Hong Kong.

B 02374

OFFICIAL MEASURER'S OFFICE.

Hongkong, 28th May, 1920

Weight of Cargo

Shipped per S. S. "Edmore"

To Seattle.

S/O. No. —

Shippers: Messrs. Kelley & Co.

Marks.	Numbers.	Number of Packages.	Contents.	Weight per Package. lbs.	Total Weight. lbs.
[In Diamond-shaped Character]					
I. T. C.					
K 1					

150 Bags White Sugar

The above shipment was weighed in full, and the total weight of the same is certified to be (thirty-three thousand five hundred and ninety-eight pounds) 33,598

Fare of 150 Burlaps in which the original bags weighed were packed @ 2½ lbs. each 375

 33,973

(Testimony of H. G. Hotchkiss.)

The Total Tons of 20 cwt. of above 150 Packages are Fifteen tons, 3 cwt., 1 gr., 9 lbs.

W. E. WAKEHAM,
Sworn Measurer.

[Stamp]: Gilman & Co., Ltd.

Lloyd's Agents.
Hongkong.

148590. Plaintiff's Exhibit "L." 25. Filed Sep. 27, 1921. George A. Grant, Clerk. By Benj. C. Levy, Deputy. Ent'd—5.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

There was also an invoice, consular certificates and a set of negotiable Ocean Bills of Lading, and a policy of insurance which accompanied the draft.

The draft was presented through the National Bank of Commerce. The draft with the documents attached came to me. I looked the documents over and accepted the draft, writing across the face "Payable thirty days after date." I do not recall that I did anything else prior to the acceptance of the draft. The draft was presented in person over the counter of the bank, during business hours, and I handed the messenger a trust receipt, and kept the documents on my desk until after 3 o'clock. I showed them to Mr. Witherspoon who assisted me in checking them up with the letter of credit. He and I read the documents. I have no recollection of communicating with anyone else before putting my written acceptance on the draft.

(Testimony of H. G. Hotchkiss.)

We returned the draft to the National Bank of Commerce and kept the documents. On its due date, we paid the draft. Between the time when we accepted the draft and the due date we did not communicate with the International Trading [45] Company relative to the payment of the draft, because they were not the ones we were looking to. I did communicate with some one of Waterhouse & Co. relative to its payment. I can't say just which persons. It is my impression that I talked with Mr. Smalley and with Mr. Boxer, both of them.'

We never forwarded to the Orient, or anywhere else, the letter of credit issued by us, and dated May 17, 1920. It is customary in issuing letters of credit for the issuing or drawing institution to give telegraphic or cable advice that it is issuing the letter of credit and then to forward the letter to the party in whose favor it is drawn or to some banking institution at the point where the credit is to be utilized. This is done where the mail will reach there in time, but in this case it would not. In this case the shipment had to leave on June 1st and it was impossible to get it through before that date. The cables that we sent was the only advice that we gave the Orient as to the terms and conditions and manner in which the letter was being opened, and we had no further communication with Kelley & Co., or the International *Banking* Corporation other than what we have produced here.

(Testimony of H. G. Hotchkiss.)

Cross-examination.

Frank Waterhouse & Co. paid for these cables. At the time we sent the first cable, Mr. Boxer, who was the man of Frank Waterhouse & Co. whom I had dealings with said they expected several more letters of credit and that they would request us to cable as in the first instance. They expected those within the next few days. The letters that were issued by the other banks to the International were delivered to us.

The document you submit to me is a letter from the Dexter Horton National Bank to the International Trading Company, dated May 12, 1920, quoting a telegram received from the First National Bank of Chicago opening a letter of credit for [46] \$234,000. Below the International Trading Company of America have assigned to Frank Waterhouse & Co. This was the first credit opened on the Montgomery, Ward & Co. shipment.

(The letter and assignment above referred to were received in evidence and marked Defendant's Exhibit "A-1.")

Defendant's Exhibit No. "A-1."

**THE DEXTER HORTON NATIONAL BANK
OF SEATTLE.**

Capital \$1,200,000—Surplus \$240,000

N. H. Latimer, President.

W. H. Parsons, Vice President

C. E. Burnside, Vice President

R. H. MacMichael, Vice President

C. H. Dodd, Vice President

H. L. Merritt, Cashier

W. W. Scruby, Asst. Cashier

C. T. Glass, Asst. Cashier

C. W. Karner, Asst. Cashier

B. C. Yancey, Asst. Cashier

B. W. Pettit, Asst. Cashier

Seattle, Washington, May 12, 1920.

Foreign Department

International Trading Co., of America, Inc.,
Seattle.

Gentlemen:

We have received today the following telegram
from the First National Bank, Chicago,

"We have issued and are forwarding to you
today credit 6250 for \$234,000.00 favor Inter-
national Trading Company of America, Inc.,
for 500 tons standard white sugar at \$23.40
f. o. b. cars Seattle. Credit in force to August
1st, confirmed and irrevocable. Advice Na-
tional Bank of Commerce, your city, credit has
been opened. Charge our account with drafts
drawn thereunder."

(Testimony of H. G. Hotchkiss.)

As instructed by above bank, we have sent a copy of this letter to the National Bank of Commerce, of our city.

Yours very truly,

H. S. DEANE,

HSD-CER

Manager Foreign Dept.

For value received, the undersigned hereby assigns, transfers and sets over to Frank Waterhouse & Company the credit mentioned and referred to in the foregoing letter, and authorizes said assignee to receive all moneys due or to become due under said credit.

Dated Seattle, Washington, May 14, 1920.

INTERNATIONAL TRADING COMPANY OF
AMERICA, INC.

By G. W. Nelson,

Secy. & Treas.

Witness:

E. J. BOXER.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk.

This letter was turned over to us by Waterhouse & Co. Mr. Boxer and Mr. Nelson were very busy at that time getting sales of sugar, and Mr. Boxer made the remark that he would send over a million dollars worth of sugar through our bank, and that these credits were expected any day and they would ask us to cable increasing the original credit.

(Testimony of H. G. Hotchkiss.)

Customarily the guarantee is signed the day following the credit being issued, but in view of the fact that we expected additions to this letter of credit, we were waiting until it was complete before having the guarantee signed. The standing of Waterhouse & Co. was at that time absolutely first-class. According to my best recollection, it was within two or three days of May 22d when Waterhouse & Co. executed this guarantee.

There was nothing in the documents accompanying the draft that showed a separation of the Montgomery, Ward & Co. shipment from the Sexton shipment. It was entirely one shipment. Mr. R. D. Smalley, Treasurer, signed the guarantee for the Waterhouse Company in my presence.

We have presented the one assignment to Waterhouse of the letter of credit from the Chicago bank to the International (Defendant's Exhibit "A-1") which Waterhouse delivered to the bank, and a similar transaction occurred as to the other shipment.

Redirect Examination.

The Montgomery, Ward & Co. draft was paid on July 22d and [47] we paid the Kelley draft on July 23d. That was the purpose of the thirty-day acceptance, so that we could collect the money before we paid it out. That is the practice of good banks. At the time we paid the Kelley draft, we had presented the draft on the Sexton shipment and it had been refused.

(Testimony of H. G. Hotchkiss.)

Recross-examination.

The Kelley draft was payable in thirty days from the date we accepted it. We accepted it on June 23d. We collected the Montgomery, Ward & Co. payment on July 22d at about 1:30. The writ of garnishment was served at 2 P. M. After collecting the money on the Montgomery, Ward & Co. draft I took the Sexton letter of credit to the Seattle National Bank and it was refused on instructions from Chicago. We paid the Kelley & Co. draft the next day.

Redirect Examination.

After this transaction was all over there was an agreement or understanding with the Waterhouse Company, or some of its officers, that any loss on the whole transaction would be shared equally between the bank and Waterhouse. There was no writing that I ever saw.

(Here plaintiff rested.)

Testimony of R. D. Smalley, for Garnishee Defendant.

R. D. SMALLEY, produced as a witness for the garnishee defendant, being first duly sworn, testified as follows:

I was treasurer of Frank Waterhouse & Co. in 1920. The signature on the back of Plaintiff's Exhibit No. 7 is mine. I executed it some time after the date appearing on it, May 17th, on behalf of Frank Waterhouse & Co. I would say it

(Testimony of R. D. Smalley.)

was three or four days after May 17th, but by listening to the testimony I would say that it was three or four days after May 22d. I fix the time that I signed it because Mr. Hotchkiss said that [48] was the time he put the last amount in there. I executed the agreement after the last amount was put in, just as it shows there. I was not very familiar with the transactions that were going on at the time with reference to the different purchases and sales of sugar. I know that there were a number of sales being made, but I didn't delay signing for that reason. I never did sign these things until the bank called me up and said to come down and sign them, that they were ready. I signed after all the shipments were accounted for as it is now.

Cross-examination.

When I signed the guarantee I examined the face of the letter and noticed that it called for certain shipments of sugar. I did not examine the documents when they arrived.

Testimony of H. G. Hotchkiss, for Defendant (Recalled).

H. G. HOTCHKISS, being recalled as a witness on behalf of the defendant, testified as follows:

After the Seattle National Bank had refused to pay the draft on the Sexton sugar, it was sold in Chicago for the best price obtainable, for \$17,-896.32. We had paid on the Sexton sugar \$38,-497.02.

(Testimony of R. D. Smalley.)

On the Montgomery, Ward & Co. transaction there was a net profit of \$10,673.56, so that there was a net loss of \$9,927.44 on the two transactions.

The COURT.—There being no objections, I will take judicial notice of the judgment in this suit.

Testimony of R. D. Smalley, for Garnishee Defendant (Recalled).

R. D. SMALLEY, recalled as a witness on behalf of the garnishee defendant, testified as follows:

Frank Waterhouse & Co. took no action to have distributed to it any profit out of the Montgomery, Ward & Co. deal.

Testimony of H. G. Hotchkiss, for Garnishee Defendant (Recalled).

H. G. HOTCHKISS, being recalled as a witness on behalf of the garnishee defendant presented a statement prepared by him, treating the Montgomery, Ward & Co. deal and the John Sexton & [49] Co. deal as one transaction, and it was admitted, by consent as a correct statement and marked Defendant's Exhibit "A-3."

Defendant's Exhibit No. "A-3."**STATEMENT ON ACCOUNT OF LETTER OF
CREDIT #1128****Disbursements**

Acceptance paid account of Letter of Credit	244,970.46
Duty	15,441.31
8% interest July 20 to July 23.....	10.30
Freight to Chicago	1,364.41
Demurrage	18.54
Filing complaint	5.00
	<hr/>
Total	261,810.02

Receipts

Received from Dexter Hor- ton National Bank....	233,970.52
Received net amount sale 390 bags of sugar	9,298.59
Received net amount sale 360 bags of sugar	8,597.73
	<hr/>
Net Loss—	\$9,943.18

[Endorsed]: No. 4072. United States Circuit
Court of Appeals for the Ninth Circuit. Filed Aug.
4, 1923. F. D. Monckton, Clerk.

Testimony of R. D. Smalley, for Garnishee Defendant (Recalled).

R. D. SMALLEY, being recalled as a witness on behalf of the garnishee defendant, testified as follows:

In 1920, I opened letters of credit on account of Frank Waterhouse other than this one. They were opened sometimes by letter and sometimes by telephone. After they were issued they would call me up and say "I want you to come down and sign this guarantee."

Testimony closed.

Thereupon the case was argued to the court and following such argument the case was reopened and the following further testimony was admitted:

Testimony of H. G. Hotchkiss, for Garnishee Defendant (Recalled).

H. G. HOTCHKISS, being recalled as a witness for the garnishee defendant, testified as follows:

Cross-examination.

The draft (Plaintiff's Exhibit 11) after acceptance, was returned to the National Bank of Commerce. The documents remained with me. The draft was accepted June 23d and was paid July 23d. Some time after acceptance and before payment, Mr. Boxer, who is the manager of the foreign department of Frank Waterhouse & Co., but is not an officer of that company, examined and checked all the documents called for in the letter

(Testimony of H. G. Hotchkiss.)

of credit except the draft. I cannot give you the substance of our conversation. I don't know what he said.

Redirect Examination.

When I showed him these documents, Mr. Boxer did not raise any question about our paying the draft, made no objection to it.

Recross-examination.

This was after we had accepted the draft and delivered it to the National Bank of Commerce but before it was paid. The bank was liable as soon as it was accepted. Our liability to the holder of the draft was fixed upon the acceptance. [50]

The COURT.—There was nothing in this case at the time it opened, in your opening statements, to apprise the Court of the importance of the question of the conformity of these documents to the letter of credit; nothing was said in opening the case that it was claimed that any part of this shipment did not measure up to the contract made by the letter of credit. Therefore the action of the Court yesterday in sustaining the objection to the question about this talk that Mr. Hotchkiss had with the representative of Waterhouse & Company.

Whether this arrangement between Nelson and Waterhouse & Company is treated as a partnership or a joint adventure or joint enterprise, or whatever you may designate it, I am convinced that Waterhouse & Co. was the fully authorized agent of the International Trading Company to make whatever arrangements were necessary with

the bank in order to secure finances. That being true, this guaranty that was put on the back of the letter of credit was the final step in securing the money. If it is not looked at as contemplated in the first borrowing, the agency would authorize Waterhouse & Company to guarantee and pledge and give a lien on the whole proceeds of the transaction to secure the bank in making the arrangement for the money, and I find that everything was pledged by that guaranty on the back of the letter of credit.

Now, it has been argued that afterwards, in borrowing the \$500, there was a recognition that these were separate deals and separate transactions and to be kept separate in every way. That does not follow. If the International and Nelson wanted to pledge a part of what was to be realized out of these deals with his customer, for his own convenience, that could be done, without showing any intention to recognize the guaranty on the back of the letter of credit in any other way [51] than pledging everything.

Regarding this question of the documents: If Waterhouse & Company were guarantors and nothing else, there might be and would be a more serious question in the case. Of course the suit between the National City Bank and the Seattle National Bank is another story. What makes this governed by another rule is this fact, that is, that Waterhouse & Company were interested not only in the documents but they were interested in the sugar; and although the National City Bank had

accepted the Kelley draft, yet I am convinced from the evidence in this case that Waterhouse & Company, when the documents were presented—and the Court must conclude that they had notice that they did not exactly conform—assuming that they did not conform, that it was then the duty of Waterhouse & Company, representing its own interest and that of the partnership or the other company associated with it in the enterprise—it was then the duty of Waterhouse & Company to notify the bank that the sugar belonged to the bank, that Waterhouse & Company had no further interest in it and they could dispose of it as they pleased, but instead of that it appears clear to the Court that they were willing to take a chance on the sugar yet. Well, they could not do that and later, when there was a loss on the sugar, repudiate the whole thing and come in and take the other tack. The findings will be in favor of the garnishee defendant. An attorney fee of \$250 is not unreasonable. [52]

Afterwards, to wit, on the 21st day of December, 1922, the parties hereto, by their respective counsel, again appeared before said Court, and thereupon the following proceedings were had:

Counsel for plaintiff presented to the Court certain requests in writing for rulings on the legal sufficiency of the evidence, for certain special findings and declarations of law and that judgment be entered in favor of the plaintiff and against the garnishee defendant, and they and each of them were by the Court severally denied

upon the merits because the Court deemed that the same, under the evidence in this case, and the law applicable thereto, were not well taken. To which rulings, counsel for plaintiff then and there duly excepted and such exceptions were allowed by said Court.

The Court thereupon endorsed upon said written requests, its refusal of the same as aforesaid, and the allowance of such exceptions and such requests with such refusals and allowance were duly filed in this cause and made a part of the record.

Thereupon the Court signed general findings in said cause and the judgment herein, to which findings and judgment counsel for plaintiff duly excepted and said exceptions were allowed by the Court. Such exceptions and allowance were in writing and were filed in this cause and made a part of the record.

The foregoing contains all the evidence received upon the trial of this cause relating to and material to the foregoing exceptions, and said plaintiff prays that it may be allowed settled and signed as his bill of exceptions herein.

HADLEY, HAY & HADLEY,

Attorneys for Plaintiff. [53]

Service of the within is accepted and receipt of copy admitted this 30th day of April, 1923.

ALMON RAY SMITH,

Attorney for Gar. Def.

[Endorsements]: Filed May 16, 1923. [54]

[Caption and Title.]

Order Settling Bill of Exceptions.

This cause having come on regularly before the Court on this 15th day of May, 1923, upon the application of plaintiff for the settling and certifying of his proposed bill of exceptions lately filed herein, and the time for presentment of such bill for settlement having been duly extended from time to time by stipulation of the parties and orders of this Court and said proposed bill having been duly presented and served within the time so extended, and service of a copy of said proposed bill having been served on the attorneys for the defendant on the 30th day of April, 1923, and no amendments thereto having been proposed or filed, and the time for proposing such amendments having elapsed, on motion of Messrs. Hadley, Hay & Hadley, attorneys for plaintiff, it is ordered, that said proposed bill of exceptions, including the several exhibits, motions, requests, and exceptions referred to therein, and on file herein, be and the same is hereby allowed, approved and settled as the true and correct bill of exceptions in this cause, and that when filed, it be made a part of the record therein.

EDWARD E. CUSHMAN,
Judge.

O. K.—ALMON RAY SMITH,

Atty. for Gar. Def. [55]

[Endorsements]: Filed May 16, 1923. [56]

[Caption and Title.]

Request of Plaintiff for Rulings on Legal Sufficiency of the Evidence and for Findings.

The plaintiff moves the Court as follows:

1. For a declaration of law that the contracts for the purchase of sugar, as shown in this case, were severable, separate and distinct, and the subsequent contracts of sale by the defendant International Trading Company, to wit, to Montgomery, Ward & Co. and to John Sexton & Co. were separate and distinct, and that the agreements with Frank Waterhouse & Company and the National City Bank were separate and distinct contracts, covering said respective shipments of sugar and the resale thereof by the International Trading Company.

2. For a declaration of law that the National City Bank, under the method in which it dealt with this sugar, its letter of credit, and the sugar shipments referred to therein, is estopped to deny that the said shipments were separate and distinct contracts. [57]

3. For a declaration of law, on the evidence in this case, that by accepting the documents drawn against the letter of credit issued by the National City Bank, the National City Bank acted at its peril. That as said documents did not conform to the said letter of credit, the acceptance thereof and the acceptance of the draft drawn under said letter of credit, without informing the Waterhouse Company or submitting said documents and draft to

Frank Waterhouse & Company, discharged said Waterhouse & Company as guarantors on said letter, and that, in any event, the acceptance by the National City Bank of said draft should have been a qualified one to the extent only that said draft was in payment of 500 tons of said sugar, which was to be reshipped to Montgomery, Ward & Company. That by reason of the release of said guarantor, Frank Waterhouse & Company, The National City Bank became indebted to the International Trading Company in the sum of two-thirds of the sum of \$10,673.26, which profit said bank had received on the resale of 500 tons of said sugar to Montgomery, Ward & Company.

4. For a declaration of law that the National City Bank recognized and accepted the interest of the International Trading Company in and to the extent of two-thirds of the sum of \$10,673.26 by taking an assignment of the interest of said International Trading Company in and to a contract relative to the division of said profits with Frank Waterhouse & Company.

5. For a declaration of law that, under the undisputed evidence in the case, the various contracts [58] between Frank Waterhouse & Company and the International Trading Company were separate and distinct, all of which was known to the National City Bank, and that there was no partnership or general adventure relation existing between Frank Waterhouse & Company and the International Trading Company in either the purchase of sugar from the Orient or the resale thereof

to Montgomery, Ward & Company in one case and to John Sexton & Company in the other, and that no relation of principal and agent existed between the Waterhouse Company and the International Trading Company.

6. For a ruling that under the undisputed testimony in this case, the National City Bank was, at the time of the service of the writ of garnishment upon it, indebted to the defendant International Trading Company, in a sum equivalent to two-thirds of \$10,673.26.

7. For a ruling that, under the undisputed testimony in this case, neither Frank Waterhouse & Company nor the International Trading Company had any notice of nonconformity of documents presented, covering the quality, description and analysis, against the letter of credit issued by the National City Bank at any time up to and including the acceptance of the draft likewise drawn under said letter of credit.

8. For a ruling that, under the undisputed evidence in this case, after the acceptance of the draft drawn against the National City Bank under its letter of credit, it was in no manner prejudiced by any action or lack of action by either Frank Waterhouse & Company or the International Trading Company. [59]

9. For a ruling of law, under the undisputed testimony in this case, that plaintiff is entitled to judgment against the garnishee defendant, in the sum of \$5,200.00, together with interest thereon

at the rate of 6% per annum from July 7, 1920, and for its costs.

HADLEY, HAY & HADLEY,
Attorneys for Plaintiff.

The foregoing requests were duly and timely presented to the Court before the entry of judgment herein, and they and each of them are severally denied upon the merits and because the Court deems that the same, under the evidence in this case and the law applicable thereto, are not well taken, to which rulings the plaintiff excepts and exceptions are allowed.

Done in open court this 21st day of December, 1922.

EDWARD E. CUSHMAN,
Judge.

[Endorsements]: Filed Dec. 21, 1922. [60]

[Caption and Title.]

**Exceptions of Plaintiff to Findings of Fact and
Conclusions of Law.**

I.

Plaintiff excepts to finding of fact No. 1 as proposed in this action, on the ground that the same is not supported by the evidence and the law in this action.

II.

Plaintiff excepts to finding of fact No. 2 on the ground that the same is not supported by the evidence and the law in this action.

III.

It excepts to finding of fact No. 3 on the ground that the same is not supported by the law or the evidence in this action.

IV.

It further excepts to conclusion of law No. 1 on the ground that the same is not supported by the evidence in this action or the law applicable thereto.

V.

It excepts to conclusion of law No. 2 for the reason that the same is not supported by the evidence and the law applicable thereto in this action.

HADLEY, HAY & HADLEY,

Attorneys for Plaintiff. [61]

The foregoing exceptions, and each and every one of the same, were presented to the Court before the Court made its findings of fact and conclusions of law herein, and each and every one of said exceptions were severally denied because the Court deems the same, under the evidence in this case and the law applicable thereto, not well taken, and to each of said rulings the plaintiff excepts, and its exceptions are hereby allowed.

Done in open court this 21st day of December, 1922.

EDWARD E. CUSHMAN,

Judge.

[Endorsements]: Filed Dec. 21, 1922. [62]

[Caption and Title.]

Assignment of Errors.

Comes now the plaintiff and files the following assignment of errors upon which he will rely in his prosecution of the writ of error in the above-entitled cause, to wit:

I.

The said Court erred in refusing plaintiff's request No. 1 on file herein for a declaration of law.

II.

The said Court erred in refusing plaintiff's request No. 2 on file herein for a declaration of law.

III.

The said Court erred in refusing plaintiff's request No. 3 on file herein for a declaration of law.

IV.

The said Court erred in refusing plaintiff's request No. 4 on file herein for a declaration of law.

V.

The said Court erred in refusing plaintiff's request No. 5 on file herein for a declaration of law.

VI.

The said Court erred in refusing plaintiff's request No. 6 on file herein for a ruling of law. [63]

VII.

The said Court erred in refusing plaintiff's request No. 7 on file herein for a ruling of law.

VIII.

The said Court erred in refusing plaintiff's request No. 8 on file herein for a ruling of law.

IX.

The said Court erred in refusing plaintiff's request No. 9 on file herein for a ruling of law.

X.

The Court erred in making its finding of fact No. 1.

XI.

The Court erred in making its finding of fact No. 2.

XII.

The Court erred in making its finding of fact No. 3.

XIII.

The Court erred in making its conclusion of law No. 1.

XIV.

The Court erred in making its conclusion of law No. 2.

XV.

The Court erred in rendering judgment for the garnishee defendant and against plaintiff.

Wherefore, the said Martin Rozema, plaintiff in error, prays that the judgment of the District Court of the United States for the Western District of Washington, Northern Division, be reversed and that a judgment be directed to be entered for the plaintiff or that a new trial be granted.

HADLEY, HAY & HADLEY, BAUSMAN, OLDHAM, BULLITT & EGGERMAN,

Attorneys for Plaintiff.

[Caption and Title.]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to 72, inclusive, to be a full, true, correct and complete copy of so much of the record, papers and other proceedings in the above and foregoing cause, as is required by stipulation of counsel filed and shown herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same constitute the record on return to writ of error herein from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled [73] cause, to wit:

Clerk's fees (Sec. 828, R. S. U. S.), for making
record, certificate or return, 173 folios
at 15¢..... \$29.95

Certificate of Clerk to transcript of record,	
4 folios at 15¢.....	.60
Seal to said certificate20
Certificate of Clerk to original exhibits,	
3 folios at 15¢.....	.45
Seal to said certificate..20

I hereby certify that the above cost for preparing and certifying record, amounting to \$27.40, has been paid to me by attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error filed on July 11, 1923, on which date a copy of the same was lodged in my office for the defendant in error, and the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, at Seattle, in said District, this 1st day of August, 1923.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [74]

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Martin Rozema, Assignee of the Judgment of The Hale Company, a Corporation, Against the International Trading Company, a Corporation, Plaintiff in Error, vs. National City Bank of Seattle, a National Banking Corporation, Garnishee, Defendant in Error. Transcript of Record. Upon Writ of Er-

ror to the United States District Court of the Western District of Washington, Northern Division.

Filed August 4, 1923.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

In the United States Circuit Court of Appeals for
the Ninth Circuit.

No. 4072.

MARTIN ROZEMA, Assignee of the judgment of
THE HALE COMPANY, a Corporation,
against the INTERNATIONAL TRADING
COMPANY, a Corporation,

Plaintiff in Error,

vs.

NATIONAL CITY BANK OF SEATTLE, a Na-
tional Banking Corporation, Garnishee,

Defendant in Error.

Stipulation Re Printing Record.

It is hereby stipulated and agreed by the above-named plaintiff and defendant in error, by their respective attorneys, as follows:

First. That inasmuch as Plaintiff's Exhibit 12 contains nine separate certificates of analysis covering 5258 bags of sugar, which certificates are all in similar form and of similar import except as to the number of bags covered by each certificate

and the origin and number of each set of bags, and inasmuch as Plaintiff's Exhibit 13 contains nine certificates of weights, being one certificate for each set of bags above mentioned, and that all of said certificates of weights are also of similar form and import except as to the number of bags covered by each certificate and their respective weights, only one of said certificates of analysis and only one of said certificates of weights shall be printed.

Second. That in printing the record in this case there shall be omitted the caption and title of every document and paper except the one found on page 2 of the certified record, and the one found on page 25 of such record, and the words "Caption and Title," and the name of the paper or document shall be substituted therefor.

Third. That endorsements other than file-marks may be omitted, and the word "Endorsements" printed in lieu thereof.

Fourth. That in printing the record, a copy of each exhibit may be inserted and printed in that part of the bill of exceptions wherein it is referred to as having been admitted in evidence.

Fifth. That the following documents and papers in the certified record be omitted, viz.:

	Record page.
1. Notice of assignment of judgment,	18
2. Petition for new trial, filed Jan. 31, 1923	30
3. Order denying same, filed Apr. 2, 1923	33
4. Order extending time for filing bill of exceptions, dated and filed Apr. 17, 1923	34
5. Similar order, dated and filed May 1, 1923	36

6. Petition for writ of error, order allowing same
and fixing amount of bond, filed July 11,
1923 65
7. Writ of error, filed July 11, 1923 75
8. Bond and approval, filed July 11, 1923
9. Citation with proof of service, filed July 12,
1923 76
10. Waiver of joinder on appeal, filed July 11,
1923 69
11. Praecipe for transcript, filed July 13, 1923 71
12. Order sending up original exhibits, 70

It is further stipulated and agreed that the documents and papers above mentioned to be omitted from the printed record may be referred to by counsel or the Court, if deemed necessary in the course of the argument, or otherwise, during the disposition of the cause.

HADLEY, HAY & HADLEY,
Attorneys for Plaintiff in Error.

ALMON RAY SMITH and POE, FALKNOR &
FALKNOR,

Attorneys for Defendant in Error.

[Endorsed]: No. 4072. United States Circuit Court of Appeals for the Ninth Circuit. Filed Aug. 4, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

